

**Hemet Casting Company and Aluminum Brick and Clay Workers International Union, AFL-CIO.<sup>1</sup>**  
Cases 21-CA-19501 and 21-CA-19756

February 24, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On October 2, 1981, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> Pursuant to the unopposed motion of the Charging Party, the name of the Charging Party, formerly Aluminum Workers International Union, AFL-CIO, has been changed to reflect the September 1, 1981, merger between the Aluminum Workers International Union and the United Brick and Clay Workers International Union, AFL-CIO.

<sup>2</sup> General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We also find that the Administrative Law Judge, by stating that there was a reasonable doubt that employee Curtis' recall of an alleged interrogation was reliable and that her testimony concerning the conversation could not be used as a basis for finding a violation, implicitly discredited Curtis' testimony.

<sup>3</sup> In adopting the Administrative Law Judge's dismissal of the complaint's allegation that the Respondent violated Sec. 8(a)(1) by interrogating Curtis concerning her union sympathies, we rely on the absence of credible evidence to support the allegation. We do not rely on court decisions cited in fn. 20 of the Administrative Law Judge's Decision.

**DECISION**

**STATEMENT OF THE CASE**

**RUSSELL L. STEVENS**, Administrative Law Judge: This case came to hearing before me in Riverside, California, on July 21 and 22, 1981. The original charge in Case 21-260 NLRB No. 60

CA-19501 was filed on September 3, 1980, by Aluminum Workers International Union, AFL-CIO, herein the Union, and the amended charge in that case was filed by the Union on September 4, 1980. The original charge in Case 21-CA-19756 was filed by the Union on November 21, 1980. By order dated January 2, 1981, the Acting Regional Director for Region 21 consolidated said two cases and on the same date the Acting Regional Director issued a consolidated complaint. The complaint alleges that Hemet Casting Company, herein Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material herein Respondent, a California corporation, has been engaged in the manufacture of nonferrous investment casting and has operated a facility located in Hemet, California. In the course and conduct of its business operations Respondent, during the last 12-month period, sold and shipped goods and products valued in excess of \$50,000 directly to customers located outside the State of California.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

Aluminum Workers International Union, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Background<sup>1</sup>**

At times relevant herein Respondent had approximately 250 employees, of whom approximately 200 were in a unit<sup>2</sup> represented by the Union. Respondent's president was Jack Tangeman; Rezmer was operations manager; and the plant manager was Larry Pellerin.<sup>3</sup> Other com-

<sup>1</sup> This background summary is based upon stipulation of counsel and upon credited testimony and evidence that is not in dispute.

<sup>2</sup> The unit is:

All production and maintenance employees, including shipping and receiving employees, production control employees, inspectors, truck drivers, and leadpersons employed at Respondent's facility located at 760 West Acacia Avenue, Hemet, California; excluding office clerical employees, professional employees, working foremen, watchmen, guards and supervisors as defined in the Act.

<sup>3</sup> Neither Rezmer nor Pellerin presently works for Respondent. Rezmer was Pellerin's supervisor. The supervisory status of Tangeman, Rezmer, and Pellerin is not in dispute. At all times material herein, Pellerin was in charge of Respondent's labor relations, subject to the supervision of Tangeman.

panies having a relationship with Respondent were located in several places in the United States, including Hemet Steel Casting<sup>4</sup> and Quality Testing Laboratories (QTL), neither of which had a bargaining relationship with the Union. Tangeman was president of Hemet Steel Casting and was a shareholder in but not an officer of QTL. Hemet Steel Casting had approximately 90 employees and was located approximately 350 feet from Hemet Casting. Its plant manager was Logan. QTL had approximately 18 employees and was located approximately 3 miles from Respondent. Pellerin had no relationship with either Hemet Steel Casting or QTL.<sup>5</sup>

The Union first represented Respondent's unit employees in 1976; the first contract between Respondent and the Union was effective October 31, 1977, through October 31, 1980. That contract contains an automatic renewal clause.

Approximately in December 1978 Respondent retained West Coast Industrial Relations Association, herein the Association, to assist it in solving several employee problems. The initial contact with the Association was made by Pellerin, and thereafter Stephen Ross, the Association's executive vice president, went to Respondent's plant and met with Tangeman and Pellerin. The three men discussed the problems of excessive employee turnover, poor employee attendance, poor employee morale, excessive generation of scrap, and low productivity at the plants of Respondent and Hemet Steel Casting. Ross was asked to prepare a comprehensive set of personnel policies and procedures, as well as some new compensation and benefit programs, for all employees of the Hemet Companies. Ross<sup>6</sup> started work on the assignment but his efforts were desultory, and often delayed because of frequent inability to get in touch with Tangeman, who was extremely busy and often away from his office. However, Ross did some work on the assignment, and undertook other personnel tasks for Respondent. Ross met with Pellerin several times during 1979 and discussed a revised benefit program involving only Respondent's supervisory and nonbargaining unit employees. On September 14, 1979, Pellerin prepared and gave to Tangeman a memorandum<sup>7</sup> outlining his recommendations relative to such benefits. A copy of that memorandum was given to Ross, who had been meeting with Tangeman and an executive of a sister company in Florida, relative to the possibility of preparing a benefits program that would be consistent among all the related companies. Included in Ross' tasks was advice relative to the activity of a splinter group of employees at Respondent's plant, affiliated with the National Industrial Union, which had demanded that Respondent bargain with it. On April 29, 1980, Ross drafted the following letter to the National Industrial Union and sent it over Tangeman's signature:

Dear Mr. Taliani:

<sup>4</sup> Hemet Steel Casting engaged in casting ferrous metals; Respondent cast only in nonferrous metals.

<sup>5</sup> The three companies sometimes collectively are referred to herein as the Hemet Companies.

<sup>6</sup> Counsel stipulated that Ross is an agent of the three Hemet Companies.

<sup>7</sup> G.C. Exh. 14.

This is to advise you that our current collective bargaining agreement is between Hemet Casting Company and Aluminum Workers' International Union. We have been informed by the above international union that we have dealt with, that the local union which you represent, seeking recognition, is no longer associated with the Aluminum Workers' International Union. There is also a serious question as to whether your organization is even a union under the Labor Management Relations Act. Our contract clearly identifies the parties to that agreement and it is quite clear that your organization is in no way identified in that agreement.

Your continuing harassment and efforts claiming to be the elected representative of Hemet Casting Company employees has not been recognized nor certified by the appropriate federal agency, the National Labor Relations Board. Until any such recognition has been so certified, we intend to continue to meet our legal obligations under the Act and our agreement with the Aluminum Workers' International Union as the appropriate designated union.

Sincerely,  
HEMET CASTING COMPANY

A copy of the letter was posted on Respondent's bulletin board. Among other things accomplished by Ross was the preparation of separate employee handbooks for the three Hemet Companies, all of which handbooks are dated September 1980.<sup>8</sup> Those handbooks described Respondent's benefit programs for the three companies.

Pursuant to discussions among, and benefits programs developed by, Ross, Tangeman, and Pellerin, Tangeman held separate meetings of supervisory personnel of the three Hemet Companies on July 22 and 23, 1980. Tangeman gave a presentation to the supervisors,<sup>9</sup> and explained the benefits they and other employees were going to receive. He said those benefits were incorporated in the new employee handbooks that had been prepared for later distribution and that the benefits would apply only to nonbargaining unit employees at Hemet Casting, but also would apply to all employees at Hemet Steel Casting and QTL. A brief one-page summary sheet of Tangeman's presentation<sup>10</sup> was handed to supervisors at the meetings. Acting pursuant to Tangeman's instructions, the supervisors met the following day with nonbargaining unit employees at Hemet Casting and all employees at the other two companies and explained the benefits to them.

Approximately in the last week of July 1980, two unit employees of Respondent, Diane Sachak and Roger McClure, with the support of other employees, prepared a rough, incomplete petition for decertification of the

<sup>8</sup> Resp. Exhs. 7, 8, and 9. Ross credibly testified that the handbooks were completed in July 1980, after several rewritings, corrections, and translation into Spanish.

<sup>9</sup> G.C. Exh. 10.

<sup>10</sup> G.C. Exh. 11. This exhibit is typewritten, but has three additions as items 8, 9, and 10. The writer of those additions was not identified at the hearing, but that fact is irrelevant, since the three items were discussed at the meetings by Tangeman.

Union. Because Sachak and McClure were uncertain of the procedure in which they were involved, McClure called the National Labor Relations Board's Regional Office for guidance. Their first petition was abandoned, without any signatures having been obtained. At that time, so far as the record shows, the benefits summary sheet discussed above (G.C. Exh. 11) had not been seen by any employees; Sachak credibly testified that she had not seen it.

A few days after the first petition was abandoned by McClure and Sachak, a second decertification petition<sup>11</sup> was prepared and circulated by McClure. A copy was given to a fellow unit employee, Gilbert Santana, for circulation and solicitation of signatures. Other employees, including Sachak, also circulated the second petition. On a date not established at the hearing, but approximately on August 10, this second petition, with a total of 113 signatures, was delivered to the Regional Office of the National Labor Relations Board, but was rejected because it was not dated. Someone, whose identity was not established at the hearing, placed a copy of the petition on Pellerin's desk. The copy later was found by Pellerin, who called Ross on the telephone the same day. Pellerin and Ross discussed the petition, after which Ross told Pellerin to lock it up until Ross came to the plant. Ross also discussed the petition with Rezmer and Tangeman. On the telephone, Ross suggested to Pellerin and Rezmer that they verify the signatures on the petition.

A third petition<sup>12</sup> was prepared, circulated commencing August 12, and encouraged by James Davis, a unit employee at times relevant herein but no longer employed by Respondent. That petition contained approximately 131 signatures and was prepared as a substitute for the earlier second petition which had been rejected by the Board because of the lack of a date. Each signature on Davis' petition shows a date. Davis filed the third petition with the Board on August 19, 1980, and prior to filing it laid a copy on Pellerin's desk during Pellerin's absence.<sup>13</sup> Pellerin called Ross on the telephone and they discussed the petition. Ross went to the plant on August 25 and talked with Tangeman, Rezmer, and Pellerin, after being notified by Tangeman on August 22 that the latter had received the petition notice from the Board. Davis attached a copy of the benefits (G.C. Exh. 11) to his petition and used that summary in obtaining signatures on the petition.<sup>14</sup>

On August 19, 1980, the Union wrote to Tangeman, as follows:

Dear Mr. Tangeman:

In accordance with Article XVII, Term of Agreement, of our present Labor Agreement, this is to notify you that the Aluminum Workers Interna-

tional Union, on behalf of its Local Union #318, wishes to amend our Agreement which is scheduled to expire October 31, 1980.

Kindly contact International Representative, Richard T. Warner, 2010 W. Lincoln Avenue, Suite A-7, Anaheim, California, 92801, phone (714) 635-6380, to establish a mutually satisfactory date to begin negotiations.

Very truly yours,  
Eugene B. Green  
Exec. Ass't to the President

Ross replied to the Union's letter on August 27, 1980:

Dear Mr. Green:

On behalf of our client, Hemet Casting Company, your letter of August 19, 1980 to Mr. Jack Tangeman, President of the Company, was forwarded to me for response.

In response to your request to commence negotiations, we must inform you that we have been advised by Region 21 of the National Labor Relations Board of the filing of an RD Petition on August 19, 1980 and a pending election with regard to the subject bargaining unit.

In view of this development, our client has a serious and good faith doubt as to your Union's majority representation status. As such, we believe that it would be both inappropriate and improper to initiate collective bargaining negotiations until the matter of majority representation is determined by the pending election.

Sometime after August 27, 1980, on a date and under circumstances not explained at the hearing the Union learned of the intended dismissal by the Board of Davis' petition and replied to Tangeman on October 21, 1980:

Dear Mr. Tangeman:

Attached, you will find a copy of a letter, from Eugene B. Green, Executive Assistant to the President, Aluminum Workers International Union, dated August 19, 1980.

Due to the recent ruling of the National Labor Relations Board, we are again, in accordance with Article XVII, Term of Agreement, of our present Labor Agreement, notifying you that the Aluminum Workers International Union, on behalf of its Local Union #318, wishes to amend our Agreement.

Again, kindly contact International Representative, Richard T. Warner, 2010 West Lincoln Avenue, Suite A-7, Anaheim, California, 92802, phone (714) 635-6368, to establish a mutually satisfactory date to begin negotiations.

Very truly yours,  
Richard T. Warner, Trustee  
Aluminum Workers International  
Union, Local #318

On October 31, 1980, Ross replied to the Union:

<sup>11</sup> Resp. Exh. 2.

<sup>12</sup> This petition was dismissed by the Regional Director for Region 21 on November 4, 1980. G.C. Exh. 8.

<sup>13</sup> Davis' testimony that he never discussed the petition with Pellerin appeared unrealistic and is not credited.

<sup>14</sup> Davis testified that he found a copy of G.C. 11 on a foreman's desk and made a copy of it for use with his petition. There is no evidence that Respondent encouraged, caused, or knew in advance about any of the three petitions, hence this part of Davis' testimony is credited.

Dear Mr. Warner:

Your letter dated October 21, 1980, to our client, Mr. Jack Tangeman, President of Hemet Casting Company, has been forwarded to me for response.

While we are well aware of the National Labor Relations Board's recent determination, until this matter has been properly adjudicated, we must inform you that we currently have in our possession convincing and objective evidence that your Union no longer represents a majority of Hemet Casting employees. Accordingly and because of your lack of majority representation status, we must reject your request to commence negotiations.

Respondent acknowledges that it withdrew recognition of the Union, and has refused to bargain with the Union.

On November 6, 1980, Tangeman issued a memorandum<sup>15</sup> to all of Respondent's bargaining unit employees advising them that Respondent no longer recognized the Union as the employees' bargaining representative and that the benefits described in the employees' handbook, and already extended to nonbargaining unit employees,<sup>16</sup> would be given to unit employees effective November 10, 1980. The benefits were given to unit employees as planned.

#### B. Contentions of the Parties

The General Counsel contends that Respondent developed a scheme to rid itself of the Union and that the scheme included the following components: (1) Prepare a new fringe benefits program to cover Respondent's nonbargaining unit employees; (2) implement the new program, and limit it to nonbargaining unit employees; (3) delay the implementation until time to bargain with the Union for a new contract; (4) see that bargaining unit employees learn of the program for nonunit bargaining employees; (5) mislead unit employees relative to, or withhold from bargaining unit employees, the knowledge that those employees, through their union, could bargain for the benefits received by nonbargaining employees; (6) see that a decertification petition was filed by bargaining unit employees; (7) refuse to bargain with, or recognize, the Union on the ground that the Union no longer represented Respondent's unit employees; and (8) extend the benefits program to all of Respondent's employees. Each of these contentions is discussed below, *seriatim*.

Respondent contends that no such scheme was concocted; that its benefits program was developed for sound business reasons; that the program was implemented for nonbargaining unit employees at the earliest feasible time; that there was no relationship between the benefits program and expiration of the bargaining agreement; that Respondent did not mislead, or withhold information from, any employees; that Respondent had nothing to do with any decertification petition; that Respondent refused to bargain with, or recognize, the

Union because of a good-faith and reasonable doubt, based upon objective considerations, that the Union still represented the unit employees.

The General Counsel contends, and Respondent denies, that enroute to the last act of its scheme Respondent committed violations of Section 8(a)(1) of the Act.

#### C. Alleged Interrogation

Paragraph 15 of the complaint alleges that, on or about August 4, 1980, Pellerin interrogated employees concerning their membership, sympathies, and activities.

This allegation refers to a conversation on or about August 4, 1980,<sup>17</sup> between Pellerin and Constance Curtis, the Union's steward and an employee of Respondent. Curtis testified that Pellerin called her into his office and commenced the conversation by telling her about the demotion of employee Salvador Felix from supervisor to leadman.<sup>18</sup> Curtis testified that Pellerin then asked her whether, if Tangeman offered the employees a retirement plan, she still would be interested in a union, to which she replied she would have to see it to believe it. Curtis testified that Pellerin then said something about Respondent offering benefits, and he could not believe she had not heard rumors to that effect.<sup>19</sup> Curtis testified that Pellerin took a book from his desk that Respondent was using to prepare benefits to be offered to employees, and discussed those benefits with her. She told Pellerin Respondent's timing was perfect, since the bargaining agreement would expire in October, and Pellerin replied that Respondent had been working on the benefits more than a year, and "it just happened to all come together at this time." Curtis asked if that was the case, why did not Respondent offer the benefits to all employees and Pellerin replied that, if such an offer was made, Respondent would have to notify the Union and negotiations would have to be commenced earlier than planned. Curtis testified that Pellerin then asked her "if them benefits did go into effect, would I still be interested in the Union," and she replied, "Yes."

Curtis testified that she went into Pellerin's office approximately August 18 because she had seen the decertification petition, and had learned about the benefits package that had been implemented for nonbargaining unit employees. Curtis said she asked Pellerin why the decertification petition that was being circulated included the same benefits package intended for foremen, that he reminded her of their earlier conversation (the conversa-

<sup>17</sup> Curtis said she thought this conversation was in July, but she was uncertain. Counsel stipulated that the demotion was effected August 4. Curtis testified that Pellerin told her about the demotion after it occurred, hence, it is found that the conversation between Curtis and Pellerin was on August 4, or soon thereafter.

<sup>18</sup> This demotion is not in issue. Pellerin credibly testified that he was concerned because Felix would be losing the benefits he recently received as a foreman. Pellerin said Felix was present at the meeting with supervisors on July 23 at which benefits were discussed.

<sup>19</sup> Curtis testified that she had heard no such rumors at the time of the conversation, but that testimony does not square with the General Counsel's contention that the summary of benefits was being circulated among employees as an attachment of the decertification petition. Curtis testified that she knew a petition was being circulated, that she had seen it, and that she knew about the benefits summary at the same time.

<sup>15</sup> G.C. Exh. 12.

<sup>16</sup> The benefits were given to Respondent's nonbargaining unit employees and to all employees of Hemet Steel Casting and QTL in July 1980.

tion of August 4), and Pellerin replied that he had heard rumors about the petition and the benefits list. Curtis asked Pellerin why the benefits for nonbargaining unit employees were not going to be made available to unit employees, and Pellerin replied that Respondent could not unilaterally do that because benefits for unit employees would have to be negotiated with the Union.

Pellerin testified relative to his conversation with Curtis on August 4, and denied that he asked Curtis whether, if Tangeman offered employees a retirement plan, she still would be interested in a union. Pellerin stated that, when he told Curtis about his concern that Felix might complain about losing benefits upon demotion, Curtis asked what benefits he was talking about, whereupon Pellerin took a book from his desk and discussed with Curtis the various benefits Felix had been receiving as a foreman under the then recently instituted program for nonbargaining unit employees.

#### D. Discussion

It is noted at the outset that (1) the record does not show an antiunion bias on the part of Respondent; (2) this alleged interrogation is isolated in nature and there is no evidence that Respondent generally engaged in a pattern of interrogating or otherwise harassing or coercing employees; (3) Pellerin's alleged interrogation was cryptic and ambiguous.

Curtis worked closely with Pellerin in her position as union steward and she and Pellerin were on friendly terms. The two frequently discussed matters of mutual interest, including employee benefits, and they met regularly on a monthly basis to discuss work matters. Their two versions of the conversation of August 4 are not greatly different, beyond Pellerin's denial that he asked Curtis if she still would be interested in a union if Respondent gave unit employees a retirement program.

Curtis' memory did not seem entirely clear and Pellerin's alleged inquiry is subject to more than one interpretation. In view of their history of a close working relationship, and Curtis' position with the Union, it seems unlikely that Pellerin would consider Curtis a possible turncoat, either personally or as a company advocate within the bargaining unit. Curtis appeared to be a sincere, honest witness, but in view of the circumstances, and Pellerin's denial, there is reasonable doubt that her recall of the conversation, which occurred approximately a year ago and which was but one of many conversations she had with Pellerin, is reliable. It appears that the principal reason for Pellerin talking with Curtis in the first place, was Pellerin's concern about Felix's demotion. The two participants worked well together, frequently discussed a broad range of employee-employer relationships, and were well aware of the work sympathies of each other. Curtis testified that when Pellerin made his inquiry of her she replied that she still would be interested in the Union. There is no evidence that Pellerin had any reason to believe that Curtis was a possible union defector. There is no evidence that Respondent historically has tried to get rid of the Union. There is no evidence that Curtis was apprehensive, fearful, or antagonistic toward Pellerin during the conversation or at any other time. In view of all the circumstances, Curtis'

testimony relative to Pellerin's inquiry fairly cannot be used as the basis for finding a violation of the Act. Possibly Pellerin made some inquiry of Curtis relative to the benefits, but finding a violation would require too much speculation concerning ambiguous testimony.

The Board and several courts have considered statements and interrogations alleged to be coercive, and certain factors have been developed as helpful in determining the issue. Those factors are: (1) The history of employer hostility and discrimination; (2) the nature of the information sought (e.g., was the interrogator seeking information from which he could take action against individual employees?); (3) the identity of the questioner (i.e., what was his position in the Company); (4) the place and method of interrogation (e.g., was the employee called from work to the boss' office? Was there an atmosphere of "unnatural formality"?); and (5) the truthfulness of the reply (e.g., did the interrogation inspire fear leading to evasive answers?).<sup>20</sup> While the five listed factors are not exclusive, and do not necessarily preclude finding a violation even though they are satisfied, they are helpful in assessing the nature of the interrogation. When the factors are placed against the circumstances involved herein, it is readily apparent that the requirements for finding a violation of the Act have not been met.

#### 1. Preparation of the benefits program

The fact that Pellerin, Tangeman, and Ross first began thinking about, and working on, a new benefits program in late 1978 is not in serious dispute. All three individuals credibly testified relative to that fact, and all three credibly explained that the reason for the action was a desire to establish for all three Hemet Companies a uniform program of benefits that would be the equal of, or better than, the programs of their product competitors. Curtis,<sup>21</sup> an employee of Respondent since 1972 and the Union's shop steward since October 1977, testified that in late 1979 or early 1980 she and Pellerin discussed the fact that there was a high employee turnover rate, and that the employees needed higher pay and better benefits. Curtis further stated that Pellerin told her at that time that he was working on recommendations to Respondent to alleviate the problems they were discussing. Finally, Curtis stated that many of the things they were discussing ultimately appeared among the benefits given to nonbargaining unit employees in July 1980.

Pellerin's memorandum of September 14, 1979, to Tangeman clearly shows that he was making recommendations for supervisory, as well as rank-and-file employees. There is nothing in the record to show, or indicate, that Pellerin intended to read the Union out of the act. His testimony, supported by that of Ross and Tangeman, makes it clear that his recommendations were general

<sup>20</sup> *N.L.R.B. v. Midwest Hanger Co. and Liberty Engineering Corp.*, 474 F.2d 1155 (8th Cir. 1973), cert. denied 414 U.S. 823; *N.L.R.B. v. Rutchie Manufacturing Company*, 354 F.2d 90 (8th Cir. 1965); *N.L.R.B. v. Camco, Incorporated*, 340 F.2d 803 (5th Cir. 1965), cert. denied 382 U.S. 926; *Bonnie Bourne, An Individual d/b/a Bourne Co. v. N.L.R.B.*, 332 F.2d 47 (2d Cir. 1964).

<sup>21</sup> Curtis was on a first-name, amicable basis with both Pellerin and Tangeman.

and tentative, and were made, internally and administratively, solely for business reasons. It is clear that he was concerned primarily with employee relations at that time and that he was not addressing the separate matter of negotiating any changes with the Union. In support of these conclusions, Curtis testified that, in a conversation with Pellerin in late August 1980, Pellerin told her that Respondent could not, unilaterally, initiate any benefits changes; that any changes would have to be negotiated with the Union. That testimony of Curtis further is supported by the testimony of Ross, who credibly testified that, throughout meetings in 1979 relative to the benefits, the probability of collective bargaining relative to the benefits was discussed, and that Respondent was aware that it had an obligation to deal with the benefits through the collective-bargaining process.

The record is quite clear, and it is found, that the benefits involved herein were conceived and developed solely for valid business reasons, unrelated to any union considerations. It is further found that, as of the time the benefits were developed and prior to their announcement to employees, the benefits were an internal product of Pellerin, Ross, and Tangeman, and that they were not conceived, or related to, any scheme to get rid of the Union.

#### 2. Implementation of benefits for nonbargaining unit employees

The facts that the benefits were given to Respondent's nonbargaining unit employees in July 1980, and that the same benefits were given to all employees of Hemet Steel Casting and QTL approximately at the same time, are not in dispute. The legal dispute relative to initiation of those benefits is discussed in section 4, *infra*.

#### 3. Implementation of the benefits for bargaining unit employees

The date of implementation for unit employees, November 10, 1980, is not in dispute.

The General Counsel contends that the date of implementation was delayed in order to permit other components of Respondent's scheme to unfold.

The fact that when Ross met with Pellerin and Tangeman in December 1979 it was planned to implement the benefits program in February 1980 is not in dispute. However, the General Counsel argues that implementation intentionally was delayed. In support of that contention, the General Counsel argues that there was no real reason for the delay, and further, that printing and distribution of employee handbooks<sup>22</sup> was delayed in order to achieve maximum effect on employees, and in anticipation of employees signing a decertification petition. The General Counsel considers significant the fact that Respondent had only 250 employees, yet ordered 500 handbooks printed.

Those arguments by the General Counsel are not persuasive. Tangeman testified at length, and credibly about the causes of delay, and his testimony credibly was corroborated by Ross. Those causes were the pressures of business, Tangeman's illness, and other matters unrelated

to the handbooks. Tangeman made it clear that, important as the benefits were, other matters were more pressing. Further, Respondent and its employees were not the only ones involved—Hemet Steel Casting and QTL also had to be considered. It is found that Respondent did not intentionally delay through procrastination or use of excuses implementation of benefits for unit employees. So far as the handbooks are concerned, Ross credibly explained that the delay was caused by errors in the first printing, correction of errors, and the necessity of having a translated version (Spanish) prepared. The General Counsel's argument concerning the number of handbooks is without merit. It is common knowledge that the number of handbooks for employees must be substantially greater than the number of employees, in order to take into account the turnover of employees, loss of copies, possible increase of personnel, quantity costs of printing, and other factors.

It is found that there was no intentional delay in the distribution of employee handbooks; that handbooks were not printed in advance for unit employees; and that the handbooks were not a part of any scheme on the part of Respondent to undermine the Union.

#### 4. Bargaining unit employees' knowledge of the benefits program

In order for the alleged scheme to be successful, it would be necessary for Respondent to see that unit employees knew about benefits given, or to be given, to nonunit employees. A principal matter for consideration relative to this point is whether or not Respondent took it upon itself to see that unit employees had such knowledge. The fact that they and the Union knew of the benefits is not in dispute. Curtis knew as early as late 1979 or early 1980 that Respondent was considering an improved benefits program for all nonunit employees. Several witnesses credibly testified that unit employees generally knew after July 22 and 23 that benefits had been given to nonunit employees. Curtis and Pellerin discussed in detail on August 4, 1980, the benefits given to nonunit employees. Davis attached a copy of the benefits summary (G.C. Exh. 11) to his (third) decertification petition, and employees discussed among themselves, during circulation of both the second and third petitions, the benefits given to nonunit employees.<sup>23</sup> The third petition was Davis' project, as discussed above. Davis was a unit employee, not a supervisor. There is no evidence, or even suspicion, that Respondent suggested or requested that Davis talk with employees about the benefits program or attach a copy of the benefits summary to the petition. Although Davis testified that the benefits summary was "attached" to his petition, he circulated the petition by means of a clipboard, and there is no evidence that, when the petition was placed on Pellerin's desk, the summary was attached to it.

There is no evidence that Respondent at any time told unit employees that only nonunit employees would receive benefits. Tangeman announced the benefits to supervisors on July 22 and 23 and supervisors thereafter

<sup>22</sup> The handbooks included the benefits program.

<sup>23</sup> This matter further is discussed below.

advised only nonunit employees at all three Hemet Companies.

The General Counsel acknowledges that Respondent did not violate Section 8(a)(3) of the Act by its grant of benefits in July, but contends that Section 8(a)(1) was violated because Respondent "specifically excluded employees who were represented by the Union *because* they were represented by the Union." That conclusion is not supported by the record. It is clear that the benefits were excluded to nonunit employees for sound and lawful business reasons, and that Respondent left open the possibility of negotiating with the Union relative to extending the benefits to unit employees. That specific matter was discussed by Pellerin and Curtis as early as late 1979 or early 1980, and again on August 4, 1980.<sup>24</sup> Curtis was an agent of the Union,<sup>25</sup> thus, her knowledge of the benefits was the Union's knowledge. However, the Union never requested that Respondent bargain with it concerning the grant of benefits to nonunit employees, although as noted above, the Union requested, on August 19, that Respondent meet with it to amend the existing agreement.<sup>26</sup>

The General Counsel argues that *B. F. Goodrich Company*<sup>27</sup> stands for the proposition that "it is well settled that employee participation plans which have the effect of excluding employees because they are union members are inherently discriminatory." It may well be that the plan involved in *Goodrich* violated Section 8(a)(1) of the Act, but that case does not say that any grant of benefits exclusively to nonunit employees is a violation of the Act. After finding that Respondent did not violate Section 8(a)(3) of the Act, the Board stated in *Goodrich*:

As found by the Trial Examiner, the Union did not waive its right to be consulted about the institution of this type of benefit during the parties' negotiation of the existing collective-bargaining agreement. By thereafter instituting the plan for its unorganized employees while unlawfully refusing to bargain with the Union as the statutory representative of its warehouse employees, Respondent deprived the latter employees of their right to bargain collectively with respect to obtaining this additional benefit. As such conduct interferes with, restrains, and coerces the unit employees in the exercise of their right to bargain collectively through representatives of their own choosing, we conclude that Respondent thereby further violated Section 8(a)(1).<sup>28</sup>

In *Empire Pacific Industries, Inc.*,<sup>29</sup> the Board made it clear that not all grants of benefits are unlawful. The Board there quoted from *Shell Oil Company*:<sup>30</sup>

*Absent an unlawful motive*, an employer is privileged to give wage increases to his unorganized employees, at a time when his other employees are seeking to bargain collectively through a statutory repre-

sentative. Likewise, an employer is under no obligation under the Act to make such wage increases applicable to union members, in the face of collective bargaining negotiations on their behalf involving much higher stakes. . . .

As pointed out above, the Union was fully aware of Respondent's intention to give benefits to its nonunit employees and of Respondent's later grant of those benefits, yet the Union never requested that Respondent bargain with it concerning extending those benefits to unit employees. Respondent on at least three occasions discussed the benefits with Curtis and acknowledged its duty to bargain with the Union if benefits were to be extended to unit employees. The General Counsel did not allege in the complaint a violation of the Act in Respondent's grant of benefits to nonunit employees, and there is no basis after the hearing on which to find such a violation.

#### 5. Respondent's alleged duty to inform unit employees of their bargaining rights

The General Counsel contends that Respondent had a duty to inform unit employees that, through their union, they could bargain for the benefits received by nonunit employees and that Respondent misled the unit employees and failed to keep them properly informed relative to the benefits.

As previously discussed, and contrary to the General Counsel's conclusions set forth in his brief, Respondent made no announcement to unit employees concerning the benefits given to nonunit employees and further, Respondent did not, so far as the record shows, participate in, encourage, or condone circulation among employees of the benefits summary.

Respondent did not, by granting benefits to nonunit employees, violate the Act. The Union was aware, at least a week before Davis circulated his petition, that benefits had been granted to nonunit employees, and Curtis had seen General Counsel Exhibit 11, showing what those benefits were. Most unit employees, if not nearly all of them, had known for an even longer period of time what the benefits were since they had seen General Counsel Exhibit 11.

There is no evidence that Respondent misled any employee, nor is there any evidence that Respondent intentionally withheld any information from employees entitled to receive information.

Under such circumstances, it was the Union's responsibility to request that Respondent bargain with it, relative to benefits given to nonunit employees. That the Union failed to do. It was not Respondent's duty to inform unit employees, or their union, that they could bargain for the benefits. As stated by the Board in *City Hospital of East Liverpool, Ohio*:<sup>31</sup>

Established Board precedent requires a union that has notice of an employer's change in a term or condition of employment to timely request bargaining in order to preserve its right to bargain on that

<sup>24</sup> This date is prior to Davis' circulation of his decertification petition.

<sup>25</sup> This point is not in dispute.

<sup>26</sup> This matter is discussed *infra*.

<sup>27</sup> 195 NLRB 914 (1972).

<sup>28</sup> 195 NLRB at 915.

<sup>29</sup> 257 NLRB 1425 (1981).

<sup>30</sup> 77 NLRB 1306, 1310 (1948).

<sup>31</sup> 234 NLRB 58 (1978).

subject. In *American Buslines*, *supra*, 164 NLRB at 1055, the Board stated:

[T]he statute does not compel him [the Employer] to seek out his employees or request their participation in negotiations for purposes of collective bargaining . . . . To put the employer in default here the employees must at least have signified to respondent their desire to negotiate. [*N.L.R.B. v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 297 (1939).]

#### 6. The decertification petitions

The General Counsel argues that the decertification petitions were tainted. However, the record does not support that argument.

So far as the first petition (McClure-Sachak) is concerned, there is no suspicion, much less evidence, of taint. McClure did not testify, but Sachak did, and she was a credible witness. There is nothing in the record to indicate that Respondent encouraged, knew about, or was concerned with this petition. It is clear that many employees no longer wanted to be represented by the Union, since a rival organization, National Industrial Union, claimed as early as April 1980, and probably earlier, that it represented Respondent's employees. Sachak made it quite clear that she no longer wanted the Union to represent her and she credibly testified that other employees felt the same way.

So far as the second petition (McClure-Santana) is concerned, it is apparent that it was a continuation of the first abortive effort of McClure and Sachak. It is clear from the testimony of Sachak and unit employees Tina Carpentier and Santana that those employees did not want the Union to represent them, and that preparation of the petition was the idea of McClure, Santana, Sachak, and other employees. More than half of the unit employees signed the petition and there is nothing to show that they were coerced into signing. The General Counsel argues that the benefits summary (G.C. Exh. 11) was attached to or accompanied the petition, but the record does not support that contention. There is no evidence that Respondent gave the summary to any unit employee or otherwise made it available to any employee. Sachak credibly testified that she first saw the summary when she found a copy of it on the bathroom floor, after she already had started circulating the petition. She said she had a copy of the summary and referred to it at times while talking with employees, but that most of the employees already had seen it. She said the summary never was attached to the petition and she credibly testified that she did not tell employees that if they signed the petition they would receive the benefits outlined on General Counsel's Exhibit 11. Sachak did testify, however, that one of the reasons she became involved in the second petition was that she had seen a copy of General Counsel's Exhibit 11 in addition to wanting to get the Union out of the plant. Carpentier testified much the same and stated that the benefits had nothing to do with her participation in the petition and that she only wanted to get rid of the Union. Santana also testified to the same effect and stated that, although

some employees whose signatures he solicited asked, "What did the Company have to offer themselves," he "really couldn't answer their questions." Santana said the only thing he told employees concerning benefits was something relating to a dental plan that an employee in QTL had told him about. Santana credibly testified that he had not seen the benefits summary when he started circulating the petition and that he never told employees they would receive benefits if they signed the petition. Davis credibly testified that he participated in signing and urging other employees to sign the petition after he was solicited to do so by McClure and Santana. Davis credibly testified that the benefits summary was not attached to, or circulated with, the petition, and that he did not see the summary while the petition was being circulated. There is no evidence that Respondent suggested, encouraged, condoned, or participated in the second petition.

It is clear that the third petition (Davis) is a continuation of the efforts embodied in the two earlier petitions. So far as the record shows, the only reason the National Labor Relations Board rejected the second petition was the fact that it was not dated. Davis was told by Santana and McClure what the problem was and he was careful to see that all signers dated their signatures. There is no indication that, by the time the third petition was launched, the employees who initially had sought to decertify the Union had changed their minds. The fact that 131 of approximately 200 employees signed the petition indicates a strong and pervasive desire of employees to decertify the Union.<sup>32</sup> Tangeman credibly testified that, prior to receiving a copy of the petition from the Board soon after August 19, 1980, he did not know about, nor had he heard any rumors of, the circulation of the petition.<sup>33</sup> There is no evidence that Respondent suggested, encouraged, condoned, or participated in the third petition. There is nothing in the record, however remote, to suggest or show that there was any collusion between Respondent and the drafters of the two earlier petitions—McClure, Santana, and Sachak. The fact, which is not in dispute, that the benefits summary was attached at least some of the time to the third petition is not, absent other proof, evidence that Respondent participated in or encouraged preparation of circulation of the petition. Davis testified that he found a copy of the benefits summary on a foreman's desk and, of his own volition, used it with the petition. Since there is no evidence or testimony to the contrary, and since Davis' testimony is consistent with the record relating to the third petition,

<sup>32</sup> Carpentier was a convincing and apparently a completely truthful witness. Carpentier testified that she was aware of the benefits to be given to nonbargaining unit employees, but that when she signed the petition, she did so solely because she wanted to get rid of the Union, and that she signed before she knew about those benefits. She said she received a copy of the benefits summary from a fellow employee, Blanca Ortiz, after she signed and that she never was told she would receive benefits if she signed. She stated that, so far as she was concerned, the benefits had nothing to do with the petition.

<sup>33</sup> Pellerin knew about the petition soon after it was signed by employees, but there is no evidence that he discussed the petition with Tangeman prior to Tangeman's receipt of notice from the Board. Curtis testified that she talked with Tangeman about the first petition being circulated, but not about the second one.

Davis' testimony on this point is credited. The fact that Respondent had given the benefits listed on the summary to nonunit employees was known by many, and possibly most, of the unit employees. Davis was a unit employee, and not a supervisor, thus any representation he made to employees was not attributable to Respondent. In any event, there is no evidence or testimony showing that any employee was talked into signing the petition in order to gain benefits—Sachak and other witnesses made it clear that their principal concern was to get rid of the Union. An earlier attempt to get another union in already had failed. The principal need relied upon by the General Counsel relative to this point is the relationship between Davis and Pellerin. Davis has known Pellerin approximately 20 years and Pellerin was instrumental in obtaining employment of Davis at Respondent's plant (February 1980) and at Davis' present employer, Bourne (June 1981). The General Counsel attempted to establish that Davis somehow was rewarded by way of extra pay or job title while he was employed by Respondent, but that attempt bore no fruit. Davis testified that neither Pellerin nor any other supervisor ever told him to circulate or file a petition or to become involved in one. Davis acknowledged that he was not a union member and did not like the Union and that he had communicated that fact to Pellerin on several occasions. Davis further stated that he laid copies of the second and third petitions on Pellerin's desk, but he never discussed those petitions with Pellerin. As noted above, this latter statement seems unlikely but, in any event, there is no evidence that Pellerin's friendship with Davis had anything to do with circulation of the third petition. That petition had the active support of most unit employees, and it had been preceded by three other attempts to get rid of the Union—one invitation to an outside union, and two other petitions, neither of which was initiated by Davis. It may well be that Davis wanted the Union out and that his thoughts were shared by Pellerin, but those facts do not provide a basis for finding that Pellerin had anything to do with the petition Davis started. So far as the benefits summary is concerned, Davis acknowledged that he used that document during his petition campaign, but credibly explained:

Q. Did you ever tell an employee that they'd get those benefits in order to get them to sign the petition?

A. No, sir.

Q. What did you tell them?

A. I just said that a nonbargaining unit had received these. If we did not have the union as a third person, maybe we could speak for ourselves and ask for these items. No guarantee we would get them.

Q. Is that what you told all the people that you circulated the petition for?

A. That is correct.

The fact that Respondent was not involved in the petitions is strengthened by the testimony of Curtis, who testified that she talked with Pellerin in July 1980 about the demotion of an employee (discussed *infra*), and also about the benefits given to nonunit employees (also discussed *infra*). She said she again talked with Pellerin ap-

proximately August 18, because she was angry about a decertification petition being circulated, and "then I found out that they [employees in department 20] were passing around a benefit package that he [Pellerin] had already told me the month before and it upset me." She said Pellerin replied, "he had heard rumors to the effect but that's all he knows." Curtis further testified that she talked with Tangeman after she heard a rumor concerning the second petition:

A. Well we talked about the progress of the plant, why the lunch room—one thing wasn't done because of other pressing things. And then I did bring up the subject of hearing a rumor of the petition.

Q. Did you tell him what kind of petition?

A. Yes. I told him they had a petition out that was trying to get rid of the Union and I—the reason I brought it up to him was because I heard Art Stockdale—somebody—he's employed out of the Company—who was trying to push it on nights. I had some night people come and tell me. And I told him about that and he just couldn't believe it. He was surprised.

It is found that all three of the union decertification petitions solely were the idea and product of Respondent's employees, free of taint by any of Respondent's actions. It is further found that the proposed benefits summary never was given or distributed to or used by Respondent in an effort to undermine the union loyalty of Respondent's unit employees.

#### 7. Refusal to bargain with or recognize the Union

The fact the Respondent refused to bargain with the Union, expressed in a letter from Ross to the Union on August 27 is not in dispute. The refusal was reiterated in Ross' letter to the Union on October 31. The reason for the refusal also is not in dispute—it was Respondent's stated belief that the Union did not, at the time of the refusal, represent a majority of Respondent's unit employees.

Although the parties agree that Respondent refused to recognize the Union as representative of the unit employees, they do not agree upon the date of that refusal. At no time did Respondent specifically state its refusal to recognize the Union and the parties argue the possibility of several dates. However, Respondent did not argue, at the hearing or in its brief, that the withdrawal of recognition was beyond the 10(b) period. Respondent argues that, in effect, its letter to the Union, dated October 31, 1980, was a withdrawal of recognition because the contract expired that day. Counsel for the General Counsel states in his brief, at page 26, that a grievance of an employee (discussed *infra*) was filed on October 29, 1980, "two months after Respondent withdrew recognition and first refused to bargain with the Union." Clearly both sides recognized, and the record supports their conclusion, that Respondent withdrew recognition of the Union August 27, 1980, reiterated that withdrawal on October

31, 1980, and has continued to date to maintain that position. The 10(b) period is not an issue herein.<sup>34</sup>

So far as the refusal to bargain is concerned, the General Counsel argues that Respondent failed to meet its burden of rebutting the Union's post-contract, 1-year presumption of majority status. The principal question is whether or not Respondent legally could base its refusal to bargain with the Union, either upon its learning of the second and third petitions (as Ross testified), or upon its receipt of notification from the Board that the third petition had been filed.

An employer lawfully may refuse to bargain with a union if it has a good-faith and reasonable doubt of the Union's majority status and that doubt is supported by objective considerations. A petition signed by a majority of unit employees wherein they express their desires no longer to be represented by the Union may, in the absence of unfair labor practices on the part of the employer, support a good-faith withdrawal of the employer's recognition of a union as the bargaining representative of employees.<sup>35</sup>

It is noted, initially, that the cases cited by the General Counsel for the proposition that an employer may not assert reasonable doubt of a union's majority status when the employer has engaged in unfair labor practices tending to dissipate the union's majority status, are not applicable herein. As discussed above, so far as the record shows Respondent did not concoct and carry out a scheme to rid itself of the Union or engage in interrogation of employees, or otherwise attempt to undermine the Union's status. Respondent's actions were limited to assuming that the Union had lost its majority status, to refusing to bargain thereafter with the Union, and to implementing benefits for unit employees on a unilateral basis after it learned of employees signing the second and third petitions.

It is further noted that Respondent does not rely upon the filing of a decertification petition with the Board to support its contention that the Union no longer represented the unit employees. Respondent contends that it knew from the time it received copies of the second and third decertification petitions that more than 50 percent of its employees did not want to be represented by the Union. Respondent did not, in its two letters to the Union, dated August 27 and October 31, state the number of signatures on the petition,<sup>36</sup> but that fact is immaterial.<sup>37</sup> The General Counsel argues that Respondent did not sustain its burden of proving that the signatures all were valid, but that burden *prima facie* was met by the testimony of Davis, Pellerin, Sachak, Ross, Carpenter, and Santana. The burden then passed to the

General Counsel, who disproved no signature. The signatures total well above 50 percent of Respondent's employees.

The General Counsel further argues that a grievance filed by an employee on October 29, 1980, shows that "Respondent itself had misgivings about its good faith doubt that the Union represented its employees," but that conclusion is not supported by the record.

Employee Yolanda Garcia filed the grievances, alleging that several employees "were being unnecessarily harassed." On November 10, 1980, Pellerin wrote a letter to the Union relative to Garcia's grievance,<sup>38</sup> stated that Respondent did not believe there was merit to the grievance, and concluded:

At an appropriate and acceptable time, the Company will finish our investigation of these alleged inhumane Acts and treatment toward Company Employees and report back to the Union as to the validity of this Grievance.

On February 2, 1981, Pellerin wrote to the Union:

Dear Mr. Thompson:

After more than 12 weeks, of concern and investigation, brought about by a grievance, we (Hemet Casting Co.) have found NO VALIDITY or EVIDENCE that a foreman was treating employees in an unacceptable manner. My personal opinion after carefully reviewing all the facts, is that the overall problem was that poor working habits and also attitudes of the employees involved. Therefore, my decision is there was no violation of the contract, and no further action will be taken or considered.

Pellerin testified that the grievance was denied because he did not believe the Union any longer represented the employees, although neither of his letters to the Union set forth that belief. Pellerin said his belief was supported by the fact that the grievance was not complete and was not numbered as grievances customarily were when the Union was involved. Pellerin further testified that the grievance of October 29 had its genesis in occurrences that started 4 or 5 months prior to that date, when the Union represented the employees, and that he communicated with Curtis and the Union about the grievance as a courtesy and because of his excellent working relationship with Curtis.<sup>39</sup> Pellerin testified that he believed, when he communicated with Curtis and other union representatives relative to the grievance, that the Union no longer represented the unit employees, but he acknowledged that he never made that statement to any union representative.

Ross testified:

If I recall correctly I did have a discussion with Mr. Pellerin and I don't recall the exact time but it was sometime after we had written to the Union identifying that we would no longer recognize them. And Mr. Pellerin called and asked me wheth-

<sup>34</sup> The General Counsel first alleged Respondent's withdrawal of recognition of the Union, during the hearing herein. The General Counsel alleged the date was July 16, 1981. In fixing that date, the General Counsel relied upon Respondent's amended answer dated July 16, 1981, which changed Respondent's original admission of the Union's representation status to a denial. Respondent's counsel stated that the original answer was an inadvertent error.

<sup>35</sup> *Carolina American Textiles, Inc.*, 219 NLRB 457 (1975); *Vernon Manufacturing Company, and Spencer Industries*, 219 NLRB 622 (1975).

<sup>36</sup> This number was considerably greater than the 30 percent required for a decertification petition.

<sup>37</sup> *Upper Mississippi Towing Corporation, et al.*, 246 NLRB 262 (1979).

<sup>38</sup> G.C. Exh. 15.

<sup>39</sup> This working relationship is not in dispute.

er or not he needed to pursue grievances with the Union.

This, I believe, is a grievance that originally—it's multipart grievance, but I think some of the elements in it began around May or June of that year.

Q. Is that 1980?

A. That would have been 1980.

And it was my recommendation to Larry Pellerin that because the—in effect, the grievance had, in effect, occurred or was initiated during that May-June period, that he had an obligation to answer the grievance, even though we had, at that point in time, notified the Union that it would not be recognized.

I might also say we recommended to Mr. Pellerin that he deny the grievance on the basis of the information that he had provided me.

Pellerin's explanation of the grievance, supported by Ross, was logical and consistent and is credited. It is found that Respondent's handling of the grievance did not reinstate Respondent's recognition of the Union or constitute *de facto* recognition. This grievance is found to be irrelevant to the issues.

It is found that Respondent did not unlawfully refuse to recognize or to bargain with the Union.

#### 8. Grant of benefits to Respondent's unit employees

The fact that the benefits were given to unit employees on November 10, 1980, on the same basis they previously had been given to nonrepresented employees is not

in dispute. Having lawfully withdrawn recognition of, and lawfully having refused to bargain with, the Union Respondent was free to grant benefits to all its employees on a unilateral basis.<sup>40</sup>

#### CONCLUSIONS OF LAW

1. Hemet Casting Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Aluminum Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not, as alleged, violate Section 8(a)(1) and (5) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issues the following recommended:

#### ORDER<sup>41</sup>

The complaint is dismissed in its entirety.

<sup>40</sup> *Upper Mississippi Towing Corp.*, *supra*; *North American Manufacturing Co.*, 224 NLRB 1252 (1976).

<sup>41</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.